IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10160 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NANNEKHAN BUDDHUKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10160 of 2002

MS BANNA DATTA for MR AR SHAIKH for Petitioner No. 1

MR L.B.DABHI, AGP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 28/11/2002

ORAL JUDGEMENT

In exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 ('the Act' for short), the Police Commissioner, Vadodara City, Vadodara vide order dated March 11, 2002 (Annexure-A to the petition) detained the

petitioner/detenu.

2. The averments made in the petition and the grounds of detention order dated March 11, 2002 manifest that the petitioner is a 'Dangerous Person' within the meaning of Section 2(c) of the Act, as 4 cases under Chapter 17 of the IPC for commission of offences of theft are registered against the petitioner which are pending investigation. Besides this, statements of two anonymous witnesses are recorded in an unregistered offences, and therefore, according to the detaining authority his activities are prejudicial to the maintenance of public order and therefore, power under Section 9(2) of the Act is exercised by the detaining authority by not disclosing the names of the witnesses and accordingly detained the petitioner/detenu.

3. By filing this petition under Article 226 of the Constitution, petitioner has assailed the impugned order of detention on various grounds and prayed to issue appropriate writ, order or direction quashing and setting aside the impugned order of detention and setting him at liberty forthwith.

4. The petitioner has challenged the order of detention on various grounds. Ms. Banna Datta, learned advocate for the petitioner has restricted her arguments to the effect that subjective satisfaction recorded by the detaining authority cannot be considered as genuine as there was no enough material necessitating the detention of a person in custody. The detaining authority has observed in its order that the petitioner would indulge in the same activities after being released on bail, and therefore, it has become necessary to detain him. On this sole ground the order of detention deserves to be quashed and set aside.

5. Mr. L.B.Dabhi, learned AGP appeared on behalf of the respondents and has opposed the petition by making oral submissions. He, however, urged to pass appropriate order in light of the settled principles enunciated by the Supreme Court as well as this Court in this regard.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have perused the averments made in the petition and the documents annexed therewith. I have also considered the impugned order of detention passed by the detaining authority.

7. A similar question arose before the Supreme Court in the case of ABDUL SATHAR IBRAHIM MANIK VS. UNION OF INDIA, AIR 1991 SC 2261, in which it has been held that there must be enough material necessitating the detention of a person in custody. If there is possibility of his being released on bail and on being so released, he is likely to indulge in prejudicial activities, then there must be compelling reason to pass detention order.

8. A similar view is also expressed by the Supreme Court in the case of AMRITLAL VS. UNION GOVERNMENT, 2000 SCW 4203. In the said case it has been observed that there must be cogent material before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipsi dixit of the officer passing the order of detention. Likelihood of detenu's moving an application for bail is not a cogent material and detention order based on such material is liable to be quashed. The reasoning that there is "likelihood to be released on bail" is different from "likelihood of his moving an application for bail".

9. Applying the principles enunciated by the Supreme Court in above referred to judgements to the facts of the present case, in the instant case also the detaining authority has considered only the aspect of petitioner being released on bail and thereafter to indulge in similar activity, but, on what basis, the detaining authority has come to the conclusion that the petitioner would continue to indulge in similar activities, is not mentioned in the order of detention. Therefore, order of detention stands vitiated and the petition deserves to be allowed on this ground alone.

10. For the foregoing reasons, petition succeeds and is accordingly allowed. The impugned order of detention dated March 11, 2002 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A.M.Kapadia,J)

Jayanti*